



INFORMATION PRACTICES ACT PROVISIONS PREEMPTED (OR PARTIALLY PREEMPTED) BY HIPAA

California Civil Code Section or Subdivision Citation	Section Summary	Follow Corresponding HIPAA Regulation Citation(s) Only (unless partial preemption)
1798.18	<p>“Each agency shall maintain all records, to the maximum extent possible, with accuracy, relevance, timeliness, and completeness. <u>Such standard need not be met except when such records are used to make any determination about the individual.</u> When an agency transfers a record outside of state government, it shall correct, update, withhold, or delete any portion of the record that it knows or has reason to believe is inaccurate or untimely.” [Emphasis added.]</p>	<p><u>Partial preemption.</u> First two sentences of Civil Code section 1798.18--may not correct, update, withhold, or delete any portion of the record prior to disclosure unless pursuant to HIPAA amendment provisions.</p>
1798.19	<p>“Each agency when it provides by contract for the operation or maintenance of records containing personal information to accomplish an agency function, shall cause, consistent with its authority, the requirements of this chapter to be applied to those records. For purposes of Article 10 (commencing with Section 1798.55), any contractor and any employee of the contractor, if the contract is agreed to on or after July 1, 1978, shall be considered to be an employee of an agency. Local government functions mandated by the state are not deemed agency functions within the meaning of this section.”</p>	<p><u>Total preemption.</u> Applicable HIPAA provisions.</p>
1798.24(d)	<p>“No agency may disclose any personal information in a manner that would link the information disclosed to the individual to whom it pertains unless the disclosure of the information is: (d) To those officers, employees, attorneys, agents, or volunteers of the agency which has custody of the information if the disclosure is relevant and necessary in the ordinary course of the performance of their official duties and is related to the purpose for which the information was acquired.”</p>	<p><u>Total preemption.</u> 45 CFR 164.508</p>
1798.24(e)	<p>“No agency may disclose any personal information in a manner that would link the information disclosed to the individual to whom it pertains unless the disclosure of the information is: (e) To a person, or to another agency where the transfer is necessary for the transferee agency to perform its constitutional or statutory duties, and the use is compatible with a purpose for which the information was collected and the use or transfer is accounted for in accordance with Section 1798.25. With respect to information</p>	<p><u>Total preemption.</u> 45 CFR 164.502(a), 164.506(a), 164.508(a)</p>

	transferred from a law enforcement or regulatory agency, or information transferred to another law enforcement or regulatory agency, a use is compatible if the use of the information requested is needed in an investigation of unlawful activity under the jurisdiction of the requesting agency or for licensing, certification, or regulatory purposes by that agency.”	
1798.24(j)	<p>“No agency may disclose any personal information in a manner that would link the information disclosed to the individual to whom it pertains unless the disclosure of the information is:</p> <p>(j) To the State Archives of the State of California as a record which has sufficient historical or other value to warrant its continued preservation by the California state government, or for evaluation by the Director of General Services or his or her designee to determine whether the record has further administrative, legal, or fiscal value.”</p>	Total preemption. 45 CFR 164.502(a), 164.506(a), 164.508(a), as applicable.
1798.24(k)	<p>“No agency may disclose any personal information in a manner that would link the information disclosed to the individual to whom it pertains unless the disclosure of the information is:</p> <p>(k) To any person pursuant to a subpoena, court order, or other compulsory legal process if, before the disclosure, the agency reasonably attempts to notify the individual to whom the record pertains, and if the notification is not prohibited by law.”</p>	Total preemption. 45 CFR 164.512(e)
1798.24(l)	<p>“No agency may disclose any personal information in a manner that would link the information disclosed to the individual to whom it pertains unless the disclosure of the information is:</p> <p>(l) To any person pursuant to a search warrant.”</p>	Total preemption. 45 CFR 164.512(f)
1798.24(n)	<p>“No agency may disclose any personal information in a manner that would link the information disclosed to the individual to whom it pertains unless the disclosure of the information is:</p> <p>(n) For the sole purpose of verifying and paying government health care service claims made pursuant to Division 9 (commencing with Section 10000) of the Welfare and Institutions Code.”</p>	Partial preemption. Only if psychotherapy notes are required: 45 CFR 164.506
1798.24(p)	<p>“No agency may disclose any personal information in a manner that would link the information disclosed to the individual to whom it pertains unless the disclosure of the information is:</p> <p>(p) To another person or governmental organization to the extent necessary to obtain information from the person or governmental organization as necessary for an investigation by the agency of a failure to comply with a specific state law which the agency is responsible for enforcing.”</p>	Total preemption. 45 CFR 164.501, 164.512(a)
1798.24(s)	<p>“No agency may disclose any personal information in a manner that would link the information disclosed to the individual to whom it pertains unless the disclosure of the information is:</p> <p>(s) To a committee of the Legislature or to a Member of the Legislature, or his or her staff when authorized in writing by the member, where the member has permission to obtain the information from the individual to whom it pertains or where the member provides reasonable assurance that he or she is acting on behalf of the individual.”</p>	Total preemption. 45 CFR 164.502, 164.506 & 164.508, as applicable

1798.24a	<p>“Notwithstanding Section 1798.24, information may be disclosed to any city, county, city and county, or district, or any officer or official thereof, if a written request is made to a local law enforcement agency and the information is needed to assist in the screening of a prospective concessionaire, and any affiliate or associate thereof, as these terms are defined in subdivision (k) of Section 432.7 of the Labor Code for purposes of consenting to, or approving of, the prospective concessionaire's application for, or acquisition of, any beneficial interest in a concession, lease, or other property interest. However, any summary criminal history information that may be disclosed pursuant to this section shall be limited to information pertaining to criminal convictions.”</p>	<p><u>Total preemption.</u> 45 CFR 164.502. 164.506, and 164.508, as applicable.</p>
1798.24b	<p>“(a) Notwithstanding Section 1798.24, except the last paragraph thereof, information may be disclosed to the protection and advocacy agency designated by the Governor in this state pursuant to federal law to protect and advocate the rights of persons with developmental disabilities and persons with mental illness, as described in Division 4.7 (commencing with Section 4900) of the Welfare and Institutions Code.</p> <p>(b) Information that may be disclosed pursuant to this section includes all of the following information:</p> <ol style="list-style-type: none"> (1) Name. (2) Address. (3) Telephone number. (4) Any other information necessary to identify that person whose consent is necessary for either of the following purposes: <ol style="list-style-type: none"> (A) To enable the protection and advocacy agency to exercise its authority and investigate incidents of abuse or neglect of persons with developmental disabilities or persons with mental illness. (B) To obtain access to records pursuant to Section 4903 of the Welfare and Institutions Code.” 	<p><u>Partial preemption.</u> Section 1798.24b in cases where the disclosure is required to investigate abuse and neglect. In all other cases, HIPAA provisions concerning the release of protected health information pursuant to an authorization (or use of any applicable HIPAA exception to the HIPAA authorization requirements).</p>
1798.26	<p>“With respect to the sale of information concerning the registration of any vehicle or the sale of information from the files of drivers' licenses, the Department of Motor Vehicles shall, by regulation, establish administrative procedures under which any person making a request for information shall be required to identify himself or herself and state the reason for making the request. These procedures shall provide for the verification of the name and address of the person making a request for the information and the department may require the person to produce the information as it determines is necessary in order to ensure that the name and address of the person are his or her true name and address. These procedures may provide for a 10-day delay in the release of the requested information. These procedures shall also provide for notification to the person to whom the information primarily relates, as to what information was provided and to whom it was provided. The department shall, by regulation, establish a reasonable period of time for which a record of all the foregoing shall be maintained.</p> <p>The procedures required by this subdivision do not apply to any governmental entity, any person who has applied for and has been issued a requester code by the department, or any court of competent jurisdiction.”</p>	<p><u>Total preemption.</u> 45 CFR 164.508.</p>

1798.28	<p>“Each agency, after July 1, 1978, shall inform any person or agency to whom a record containing personal information has been disclosed during the preceding three years of any correction of an error or notation of dispute made pursuant to Sections 1798.35 and 1798.36 if (1) an accounting of the disclosure is required by Section 1798.25 or 1798.26, and the accounting has not been destroyed pursuant to Section 1798.27, or (2) the information provides the name of the person or agency to whom the disclosure was made, or (3) the person who is the subject of the disclosed record provides the name of the person or agency to whom the information was disclosed.”</p>	<p><u>Total preemption.</u> HIPAA accounting for disclosures provisions.</p>
1798.33	<p>“Each agency may establish fees to be charged, if any, to an individual for making copies of a record. Such fees shall exclude the cost of any search for and review of the record, and shall not exceed ten cents (\$0.10) per page, unless the agency fee for copying is established by statute.”</p>	<p><u>Partial preemption.</u> Section 1798.33, but only if ten cents (\$0.10) per page or the agency fee for copying established by statute is “cost-based” and does not include more than “the cost of supplies for and labor of copying the protected health information requested by the individual.” Otherwise 45 CFR 164.524(c)(4).</p>
1798.35	<p>“Each agency shall permit an individual to request in writing an amendment of a record and, shall within 30 days of the date of receipt of such request:</p> <p>(a) Make each correction in accordance with the individual's request of any portion of a record which the individual believes is not accurate, relevant, timely, or complete and inform the individual of the corrections made in accordance with their request; or</p> <p>(b) Inform the individual of its refusal to amend the record in accordance with such individual's request, the reason for the refusal, the procedures established by the agency for the individual to request a review by the head of the agency or an official specifically designated by the head of the agency of the refusal to amend, and the name, title, and business address of the reviewing official.”</p>	<p><u>Partial preemption.</u> HIPAA privacy rule section 164.526. However, covered entities must take action on an amendment request within 30 days of the date of receipt of such request, rather than the 60 days allowed by HIPAA.</p>
1798.36	<p>“Each agency shall permit any individual who disagrees with the refusal of the agency to amend a record to request a review of such refusal by the head of the agency or an official specifically designated by the head of such agency, and, not later than 30 days from the date on which the individual requests such review, complete such review and make a final determination unless, for good cause shown, the head of the agency extends such review period by 30 days. If, after such review, the reviewing official refuses to amend the record in accordance with the request, the agency shall permit the individual to file with the agency a statement of reasonable length setting forth the reasons for the individual's disagreement.”</p>	<p><u>Total preemption.</u> 45 CFR 524(d)-(f), 164.530(d)</p>

1798.37	<p>“The agency, with respect to any disclosure containing information about which the individual has filed a statement of disagreement, shall clearly note any portion of the record which is disputed and make available copies of such individual's statement and copies of a concise statement of the reasons of the agency for not making the amendment to any person or agency to whom the disputed record has been or is disclosed.”</p>	<p><u>Total preemption.</u> 45 CFR 164.526(d)(4)</p>
1798.40(e)	<p>“This chapter shall not be construed to require an agency to disclose personal information to the individual to whom the information pertains, if the information meets any of the following criteria:</p> <p>(e) Would compromise the objectivity or fairness of a competitive examination for appointment or promotion in public service, or to determine fitness for licensure, or to determine scholastic aptitude.”</p>	<p><u>Partial preemption.</u> Civil Code section 1798.40(e) if the disclosure is not requested by the person who is the subject of the protected health information. Otherwise HIPAA privacy regulations concerning authorizations.</p>
1798.40(f)	<p>“This chapter shall not be construed to require an agency to disclose personal information to the individual to whom the information pertains, if the information meets any of the following criteria:</p> <p>(f) Pertains to the physical or psychological condition of the individual, if the agency determines that disclosure would be detrimental to the individual. The information shall, upon the individual's written authorization, be disclosed to a licensed medical practitioner or psychologist designated by the individual.”</p>	<p><u>Total preemption.</u> 45 CFR 164.524(a)(3)(i)</p>
1798.41(b).	<p>“Except as provided in subdivision (c), each agency shall conduct a review of its determination that particular information is exempt from access pursuant to Section 1798.40, within 30 days from the receipt of a request by an individual directly affected by the determination, and inform the individual in writing of the findings of the review. The review shall be conducted by the head of the agency or an official specifically designated by the head of the agency.”</p>	<p><u>Total preemption.</u> 45 CFR 164.524(a)(4), (d)(4)</p>
1798.41(c).	<p>“(c) If the agency believes that compliance with subdivision (a) would seriously interfere with attempts to apprehend persons who are wanted for committing a crime or attempts to prevent the commission of a crime or would endanger the life of an informant or other person submitting information contained in the record, it may petition the presiding judge of the superior court of the county in which the record is maintained to issue an ex parte order authorizing the agency to respond to the individual that no record is maintained. All proceedings before the court shall be in camera. If the presiding judge finds that there are reasonable grounds to believe that compliance with subdivision (a) will seriously interfere with attempts to apprehend persons who are wanted for committing a crime or attempts to prevent the commission of a crime or will endanger the life of an informant or other person submitting information contained in the record, the judge shall issue an order authorizing the agency to respond to the individual that no record is maintained by the agency. The order shall not be issued for longer than 30 days but can be renewed at 30-day intervals. If a request pursuant to this section is</p>	<p><u>Total preemption.</u> 45 CFR 164.524(a)(2) & (3)</p>

	received after the expiration of the order, the agency must either respond pursuant to subdivision (a) or seek a new order pursuant to this subdivision.”	
1798.43.	“In disclosing information contained in a record to an individual, an agency need not disclose any information pertaining to that individual which is exempt under Section 1798.40. To comply with this section, an agency may, in disclosing personal information contained in a record, delete from the disclosure any exempt information.”	<u>Partial preemption.</u> Civil Code section 1798.43 (to the extent that sections 1798.40(a)-(h), comply with HIPAA), otherwise HIPAA privacy rule section 164.524(d)(1).
1798.60.	“An individual's name and address may not be distributed for commercial purposes, sold, or rented by an agency unless such action is specifically authorized by law.”	<u>Total preemption.</u> 45 CFR 164.502, 164.506, & 164.508, as applicable.
1798.64	<p>“(a) Each agency record which is accepted by the Director of General Services for storage, processing, and servicing in accordance with provisions of the State Administrative Manual for the purposes of this chapter shall be considered to be maintained by the agency which deposited the record and shall continue to be subject to the provisions of this chapter. The Director of General Services shall not disclose the record except to the agency which maintains the record, or pursuant to rules established by such agency which are not inconsistent with the provisions of this chapter.</p> <p>(b) Each agency record pertaining to an identifiable individual which was or is transferred to the State Archives as a record which has sufficient historical or other value to warrant its continued preservation by the California state government, prior to or after July 1, 1978, shall, for the purposes of this chapter, be considered to be maintained by the archives.”</p>	<u>Total preemption.</u> 45 CFR 164.502, 164.506, 164.508, as applicable
1798.68	<p>“(a) Information which is permitted to be disclosed under the provisions of subdivision (e), (f), or (o), of Section 1798.24 shall be provided when requested by a district attorney.</p> <p>A district attorney may petition a court of competent jurisdiction to require disclosure of information when an agency fails or refuses to provide the requested information within 10 working days of a request. The court may require the agency to permit inspection unless the public interest or good cause in withholding such records clearly outweighs the public interest in disclosure.</p> <p>(b) Disclosure of information to a district attorney under the provisions of this chapter shall effect no change in the status of the records under any other provision of law.”</p>	<u>Partial preemption.</u> Civil Code section 1798.24(o) and applicable HIPAA privacy regulations depending on the nature of the particular request for disclosure.